CPMG / KA / BG-GPO/13/2003-2005

ಸುವರ್ಣ ಕರ್ನಾಟಕ - 2006



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೦	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಅಕ್ಟೋಬರ್ ೨೭, ೨೦೦೫ (ಕಾರ್ತಿಕ ೫, ಶಕ ವರ್ಷ ೧೯೨೭)	ಸಂಚಿಕೆ ೪೨

ಭಾಗ - ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು.

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 56 ಕೇಶಾಪ್ರ 2005, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 14ನೇ ಅಕ್ಟೋಬರ್ 2005

2005ನೇ ಸಾಲಿನ ಜೂನ್ 7ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 1 ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (Act No.21 of 2005) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (pROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005

An

Act

to prohibit unlawful activities, in relation to weapons of mass destruction and their delivery systems and for matters connected therewith or incidental thereto.

WHEREAS India is determined to safeguard its national security as a Nuclear Weapon State;

AND WHEREAS India is committed not to transfer nuclear weapons or other nuclear explosive devices, or to transfer control over such weapons or explosive devices, and not in any way to assist, encourage, or induce any other country to manufacture nuclear weapons or other nuclear explosive devices;

AND WHEREAS India is committed to prevent a non-State actor and a terrorist from acquiring weapons of mass destruction and their delivery systems;

AND WHEREAS India is committed to the objective of global nuclear disarmament;

AND WHEREAS India is committed to its obligations as a State Party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction;

AND WHEREAS India is exercising controls over the export of chemicals, organisms, materials, equipment and technologies in relation to weapons of mass destruction and their delivery systems under other relevant Acts;

AND WHEREAS it is considered necessary to provide for integrated legal measures to exercise controls over the export of materials, equipment and technologies and to prohibit unlawful activities in relation to weapons of mass destruction and their means of delivery.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Act in addition to other laws.- Save as otherwise expressly provided in this Act, the provisions of this Act shall be in addition to any other relevant Act for the time being in force in relation to any matter covered under this Act.

3. Extent and application.- (1) It extends to the whole of India including its Exclusive Economic Zone.

(2) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(3) Any person who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(4) The provisions of this Act shall also apply to-

(a) citizens of India outside India;

(b) companies or bodies corporate, registered or incorporated in India or having their associates, branches or subsidiaries, outside India;

(c) any ship, aircraft or other means of transport registered in India or outside India, wherever it may be;

(d) foreigners while in India;

(e) persons in the service of the Government of India, within and beyond India.

(5) Notwithstanding the applicability of the provisions of any other Central Act relating to any activity provided herein, the provisions of this Act shall apply to export, transfer, re-tranfer, transit and trans-shipment of material, equipment or technology of any description as are identified, designated, categorised or considered necessary by the Central Government, as pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, or to the furtherance of its foreign policy or its international obligations under any bilateral, multilateral or international treaty, Covenant, Convention or arrangement relating to weapons of mass destruction or their means of delivery, to which India is a Party.

4. Definitions.- In this Act, unless the context otherwise requires,-

(a) "biological weapons" are-

(i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; and

(ii) weapons, equipment or delivery systems specially designed to use such agents or toxins for hostile purposes or in armed conflict;

(b) "brought in transit" means to bring goods from any country into India by land, air, or amphibious means of transportation, where the goods are to be taken out from India on the same conveyance on which they are brought into India without any landing in India, but does not include a conveyance in innocent passage through Indian territory, Indian territorial waters or Indian airspace of a foreign conveyance carrying goods.

Explanation I.- A conveyance is a foreign conveyance if it is not registered in India.

Explanation II.- A conveyance is in "innocent passage" if it is not engaged in relevant activity and passes through or above Indian territorial waters or airspace without stopping or anchoring in India;

(c) "chemical weapons" means,-

(i) the toxic chemicals and their precursors, except where intended for-

(a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(d) law enforcement including domestic riot control purposes;

as long as the types and quantities are consistent with such purposes;

(ii) the munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in sub-clause (i), which would be released as a result of the employment of such munitions and devices; and

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-clause (ii), together or separately;

(d) "export" shall have the meaning assigned to this expression in the Forign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(e) "fissile material" and "radioactive material" shall have the meanings assigned to these expressions in the Atomic Energy Act, 1962 (33 of 1962);

(f) "item" means materials, equipment, and technology, of any description, notified under this Act or any other Act related to relevant activity;

(g) "non-State actor" is a person or entity not acting under the lawful authority of any country;

(h) "nuclear weapon or other nuclear explosive device" means any nuclear weapon or other nuclear explosive device as may be determined by the Central Government, whose determination in the matter shall be final.

(i) "public domain" means domain that has no restrictions upon dissemination of information within or from it; the existence of any legal rights to intellectual property in that information does not remove such information from being in public domain;

(j) "relevant activity" means,-

(i) the development, production, handling, operation, maintenance, storage or dissemination of a nuclear, chemical or biological weapon; or

(ii) the development, production, maintenance, storage or dissemination of missiles specially designed for delivering any such weapon;

(k) "re-transfer" means transfer of any item notified under this Act from any country or entity to which it has been exported from India, to yet another country or entity;

(l) "technology" means any information(including information embodied in software) other than information in the public domain, that is capable of being used in-

(i) the development, production or use of any goods or software;

(ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of a service of any kind.

Explanation.- When technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used, in the development, production or use of such technology or goods;

(m) "terrorist" shall have the meaning assigned to this expression in the Unlawful Activities (Prevention) Act, 1967 (37 of 1967);

(n) "trans-shipment" means to remove goods from the conveyance on which they were brought into India and to place the goods on the same or another conveyance for the purpose of taking them out of India, where these acts are carried out on a "through bill of lading", "through airway bill" or "through manifest".

Explanation.- "through bill of lading", "through airway bill" and "through manifest" means respectively a bill of lading, airway bill and manifest, for the consignment of goods from a place outside India to a destination which is also outside India without a consignee in India;

(o) "unlawful" means without the authority of the Central Government and the expression "unlawfully" shall be construed accordingly;

(p) "weapons of mass destruction" means any biological, chemical or nuclear weapons.

5. Power to identify, designate, categorise or regulate certain activities.- (1) The Central Government may identify, designate, categorise or regulate, the export, transfer, re-transfer, trans-shipment, or transit of any item related to relevant activity in such manner as may be prescribed.

(2) The Central Government may, by order published in the Official Gazette, designate or notify any item related to relevant activity for the purposes of this Act.

6. Power to appoint Advisory Committees.- For the purposes of this Act, the Central Government may appoint such advisory Committees as it deems fit, and may appoint to them persons to exercise such powers and perform such duties as the Central Government may, by rules, prescribe.

7. Delegation of powers.- (1) Subject to the provisions of this Act and any other law for the time being in force, related to relevant activity, the Central Government shall have the power to direct or assign to any authority, in such manner as it may deem appropriate, such powers as may be necessary to implement the provisions of this Act.

(2) The Central Government may appoint a Licensing Authority and an Appellate Authority and make provisions relating to such authority and for licensing in such manner and in such form, as the Central Government may, by rules, prescribe.

(3) Without prejudice to the generality of the privisions contained in this Act, the authorities and mechanisms provided under other relevant Acts shall continue to deal with matters covered under those Acts:

Provided that in case of any doubt as to whether a matter falls within the scope of such relevant Acts or under this Act, the decision of the Central Government thereon shall be final.

8. Prohibition relating to weapons of mass destruction.- (1) No person shall unlawfully manufacture, acquire, possess, develop or transport a nuclear weapon or other nuclear explosive device and their means of delivery.

(2) No person shall unlawfully transfer, directly or indirectly, to any one a nuclear weapon or other nuclear explosive device, or transfer control over such a weapon, knowing it to be a nuclear weapon or other muclear explosive device.

(3) No person shall unlawfully manufacture, acquire, possess, develop or transport a biological or chemical weapon or their means of delivery.

(4) No person shall unlawfully transfer, directly or indirectly, to any one biological or chemical weapons.

(5) No person shall unlawfully transfer, directly or indirectly, to any one missiles specially designed for the delivery of weapons of mass destruction.

9. Prohibition relating to non-State actor or terrorist.- No person shall, directly or indirectly, transfer to a non-State actor or terrorist, any material, equipment and technology notified under this Act or any other Act related to relevant activity:

Provided that such transfer made to a non-State actor shall not include a transfer made as such to any person acting under lawful authority in India.

10. Prohibition as regards intimidating acts.- No person shall transfer, acquire, possess, or transport fissible or radioactive material, which is intended to be used to cause, or in a threat to cause, death or serious injury or damage to property for the purpose of intimidating people or a section of the people in India or in any foreign country, or compelling the Government of India or the Government of a foreign country or an international organisation or any other person to do so or abstain from doing any act.

11. Prohibition on export.- No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.

12. Prohition on brokering.- No person who is a resident in India shall, for a consideration under the terms of an actual or implied contract, knowingly facilitate the execution of any transaction which is prohibited or regulated under this Act:

Provided that a mere carriage, without knowledge, of persons, goods or technology, or provision of services, including by a public or private carrier of goods, courier, telecommunication, postal service provider or financial service provider, shall not be an offence for the purposes of this section.

13. Regulation of export, transfer, re-transfer, transit and transhipment.- (1) No item notified under this Act shall be exported, transferred, re-transferred, brought in transit or transhipped except in accordance with the provisions of this Act or any other relevant Act.

(2) Any transfer of technology of an item whose export is prohibited under this Act or any other relevant Act relating to relevant activity shall be prohibited.

(3) When any technology is notified under this Act or any other relevant Act, as being subject to transfer controls, the trasfer of such technology shall be restricted to the extent notified thereunder.

Explanation.- The transfer of technology may take place through either or both of the following modes of transfer, namely:-

(a) by a person or from a place within India to a person or place outside India;

(b) by a person or from a place outside India to a person, or a place, which is also outside India (but only where the transfer is by, or within the control of, person, who is a citizen of India, or any person who is resident in India).

(4) The Central Government may notify any item as being subject to the provisions of this Act, whether or not it is covered under any other relevant Act; and when such item is exhibited, sold, supplied or transferred to any foreign entity or a foreigner who is resident, operating, visiting, studying, or conducting research or business within the territorial limits of India, or in its airspace or Exclusive Economic Zone, it shall constitute an offence.

14. Offences and penalities.- Any person who contravenes, or attempts to contravene or abets, the provisions of section 8 or section 10 of this Act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also liable to fine.

15. Punishment for aiding non-State actor or terrorist.- (1) Any person who, with intent to aid any non-State actor or rerrorist, contravenes the provisions of section 9 of this Act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also beliable to fine.

(2) Any person who, with intent to aid any non-State actor or terrorist, attempts to contravene or abets, or does any act preparatory to contravention of sub-section (1), shall be deemed to have contravened that provision and the provision of sub-section (1) shall apply subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

(3) While determining the punishment under this section, the court shall take into consideration whether the accused had the knowledge about the transferee being a non-State actor or not.

16. Punishment for unauthorised export.- (1) Any person who knowingly contravenes, abets or attempts to contravene, the provisions of sub-section (4) of section 13 of this Act, shall be punishable with fine which shall not be less than three lakh rupees and which may extend to twenty lakh rupees.

(2) If any person is again convicted of the same offence under sub-section(1), then he shall be punishable for the second and every subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

17. Punishment for violation of other provisions of the Act.- (1) Where any person contravenes, or abets or attempts to contravene, any provision of this Act other than the provisions under sections 8, 9, 10 and sub-section (4) of section 13 of this Act, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

(2) If any person is again convicted of the same offence under sub-section (1), then he shall be punishable for the second and every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

18. Penalty for using false or making forged documents, etc. Where any person signs or uses, or causes to be signed or used, any declaration, statement or document submitted to the competent authority knowing or having reason to believe that such declaration, statement or document is forged or tampered with or is false in any material particular, and relates to items notified under this Act or any other relevant Act, including those related to relevant activity, he shall be punishable with fine which shall not be less than five lakh rupees or five times the value of the materials, equipment, technology or services, whichever is more.

19. Punishment for offences with respect to which no provision has been made.- Whoever contravenes any other provision of this Act or any rule or order made thereunder for which no specific punishment is provided, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

20. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other

officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section-

(a) "company" means any body corporate and includes a firm and other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

21. Cognizance of offences.- .No Court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or any officer authorised by the Central Government is this behalf.

22. Bar of jurisdiction of civil courts.- No action or proceedings taken under section 5 and sub-section (1) and (2) of section 7 of this Act by the Central Government or any officer authorised by it in this behalf shall be called in question in any civil court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under those provisions

23. Effect of other laws.- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any other instrument having effect by virtue of any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other relevant Act, then the offender found guilty of such offence shall be liable to bne punished under that Act which imposes a greater punishment.

24. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer or authority of the Central Government or any other authority on whom powers have been conferred pusuant to this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder.

25. Special provisions as to Central Government.- Nothing in this Act shall affect the activities of the Central Government in the discharge of its functions relating to the security or the defence of India.

26. Power to make rules.- (1) The Central Government may, by notification, make rules to carry out the provisions of his Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) manner of regulating any item related to relevant activity under sub-section (1) of section 5;

(b) appointment of Advisory Committees, their powers and duties under section 6;

(c) appointment of Licensing and Appellate Authority and the manner of licensing under sub-section (2) of section 7; and

(d) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

27. Power remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

ಕೆ. ನೀಲಕಂಠಾಚಾರ್

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರ),

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

PR-188

Office of the Chief Electoral Officer & Ex-Officio Principal Secretary to Govt., D.P.A.R. (Elections), K.G.I.D. Old Building (Annex), Bangalore,

NOTIFICATION

No. CIASUE 73 CHU SIA 2005, Dated: 11th October 2005

Sub: Section 4(1)(b) of the Right to Information Act, 2005 of Government of India-the particulars of the Office of the Chief Electoral Officer & Ex-officio Principal Secretary to Government, D.P.A.R.(Elections):

(i) The particulars of its Organisation, functions and duties:

The office of the Chief Electoral Officer deals with conduct of elections to Lok Sabha from 28 Lok Sabha Constituencies in Karnataka , Karnataka Legislative Assembly from 224 constituencies of the State, Karnataka Legislative Council from the Teachers', Graduates' and Local Authorities constituencies in the State, maintenance and periodical revision of electoral rolls of the above constituencies and issue of Photo Identity Cards to the electors on the guidelines issued by the Election Commission of India and such other election related works entrusted by the Election Commission of India. This office is a part of Karnataka Government Secretariat and works under the administrative control of the Chief Secretary to Government of Karnataka. This office comprises of the following Officers:

1) Chief Electoral Officer of IAS Supertime Scale(Principal Secretary) Grade.
2) Joint Chief Electoral Officer & Ex-officio Deputy Secretary to Government, DP&AR (Elections) of Group-A Grade.
3) Assistant Chief Electoral Officer & Ex-officio Under Secretary to Government, DP&AR (Elections) of Group-A (Junior Scale) Grade
4) Section Officer, Establishment & Forms Section of Group-B Grade.
5) Section Officer, Electoral Registration Section of Group-B Grade
6) Section Officer, General Section of Group-B Grade
7) Section Officer Electors' Photo Identity Card Section(Temporary post) of Group-B Grade.
8) Accounts Section headed by an Accounts Superintendent.
9) Computer Section headed by a Senior Computer Programmer.

ii) the powers and duties of its officers and employees:

1) Chief Electoral Officer & Ex-officio Principal Secretary to Government, DPAR (Elections):
Overall supervision of all the works carried out in DPAR (Elections). Correspondence with Election Commission of India, attending meetings, conferences and Seminars convened by Election Commission of India at New Delhi. Passing the bills pertaining to goods and services obtained by the DPAR(Elections). Release of grants to the District Election Officers and issue of instructions to District Election Officers pertaining to Revision of electoral rolls, conduct of elections, etc. Reviewing authority in respect of the Annual CRs of the officers of DPAR(Elections).

2) Joint Chief Electoral Officer & Ex-officio Deputy Secretary to Government, DPAR(Elections):
Assists the Chief Electoral Officer in the Conduct of Elections and other administrative works. Performs the duty of Drawing Officer in respect of above office. Corresponds with Election Commission of India, and arranges meetings and conferences with the Officers of Election Commission of India and District Election Officers.

3) Assistant Chief Electoral Officer & Ex-officio Under Secretary to Government, DPAR(Elections):
He is the Head of all the Sections of DPAR(Elections). Reviewing the files put up by the Section Officers of various Sections of DPAR(Elections) and making recommendations/suggestions to take final decision by the JCEO/CEO. Leave sanctioning authority in respect of Group-B, Group-C and Group-D officials of the office. Reporting authority in respect of the Annual CRs of the Group-B Officers Reviewing authority in respect of the Annual CRs of Group-C officials of DPAR(Elections).

4) **Section Officer Forms & Establishment Section and supporting staff:**

   i) Establishment matters pertaining to the Officers of DPAR(Elections); Postings of election staff to the offices of the District Election Officers, postings of EROs and AEROs.
   ii) Matters relating to supply of furniture and office equipments to the offices of the DEOs and EROs.
   iii) Matters relating to postal facilities, Telephones, and purchase of Fax Machines, Computers and peripherals, etc. and their annual maintenance contracts, etc.

iv) Co-ordination work in the office of the Chief Electoral Officer and other miscellaneous matters.
v) Printing and supply of forms and covers required for revision of electoral roll; General elections/bye-elections to Lok Sabha and State Assembly and Legislative Council.
vi) Procurement/printing and supply of Election related books and publications like Manual of Election Law; Handbook for Returning Officers, Handbook for Presiding Officers, etc,
vii) Printing and supply of ballot papers pertaining to Lok Sabha, Assembly; Council and Presidential Elections.
viii) Supply of Polling materials required for elections.
ix) Files relating to Ballot Boxes.
x) Matters relalting to Polling stations of Assembly and Council elections.
xi) Sending Monthly return of Vacancy and Party position pertaining to both the Houses of Legislature to the Election Commission of India.
xii) Matters relalting to Recognised and Registered Political Parties.
xiii) Matters relating to Disqualification from contesting in elections.
xiv) Election petitions.
xv) Secret Seals of the Commission.
xvi) Matters relating to submission of Accounts of election expenses by the contesting candidates in the Elections.

5) Section Officer, Electoral Registration Section and supporting staff:

(i) Preparation and revision of electoral rolls of Assembly constituencies including Service voters.
(ii) Preparation and revision of electoral rolls of Council Constituencies.
(iii) Remuneration regarding revision of electoral rolls.
(iv) Submission of monthly report on election work to the Election Commission of India.
(v) Printing of electoral rolls and fixing of rates for printing and sale price.
(vi) Declaration of Dry Day during elections.
(vii) Declaring holidays on poll days.
(viii) Appointment of polling personnel.
(ix) Issuing guidelines to the political parties regarding printing of pamphlets and other publicity materials during elections.
(x) Code of conduct of political parties.
(xi) Postponement of Shandy if it falls on polling day.
(xii) Requisition of vehicles and buildings for elections.
(xiii) Police Bandobust for elections.
(xiv) Movement programme for polling personnel.
(xv) Issuing instructions regarding ensuring of free and fair elections.

6) Section Officer, General Section and Supporting Staff:

i) Forwarding the Amendments to Election Laws sent by the Election Commission of India to all the District Election Officers and others connected with election work.
ii) Forwarding the Statutoty instructions issued by the Election Commission of India to all the District Election Officers and others connected with election work.
iii) Appointment of Returning and Assistant Returning Officers.
iv) Appointment of Electoral and Assistant Electoral Registration Officers.
v) Conduct of elections to Lok Sabha; Legislative Assembly; Rajya Sabha and Legislative Council
vi) Matters relating to allotment of symbol.
vii) Matters relating to Delimitation of Constituencies.
viii) Matters relating to various stages of election from issue of Public notice till the withdrawal of candidatures including publication of lists of contesting candidates.
ix) Counting of votes, declaration of results and allied matters.
x) Election Statistics including return of election, index card, etc.
xi) Matters relating to safe custody and disposal of election papers.
xii) Supply of copies of State Gazette to the Commission.

7) Accounts Section:

i) Preparation of Budget (Central and State)
ii) Payment of Bills.
iii) Condonation of delay
iv) Reconciliation and consolidation of accounts.
v) Appropriation of Accounts and preparation of Audit reports.
vi) Furnishing replies to Audit objections.
vii) Other Miscellaneous matters relating to Accounts including office imprest.
viii) Reimbursement of Central Government share.
ix) Claims statement of Ros, AROs, etc.
x) Allotment of funds.
xi) Settlement of T.A. claims.
xii) Inspection of subordinate offices.

8) ID Card Section:

Matters relating to issue of ID Cards to the Electors; and maintenance of statistics thereon and also finalising the claims of agencies who have issued EPICs to voters

9) Computer Section:

Matters relating to Computerisation of electoral rolls; election data, and all other computer related activities as per the Election Commission of India's instructions.

(iii) The procedure followed in the decision making process, including channels of supervision and accountability:

This office functions on the basis of the guidelines issued by the Election Commission of India. Effective implementation of the directions of the Commission through District Election Officers.

(iv) the norms set by it for the discharge of its functions:

All works in the Office are carried out strictly on the guidelines issued by the Election Commission of India.

(v) the rules regulations, instructions, manuals and records held by it or under its control or used by its employees for discharging its functions:

The particulars are given in Annexure-II.

(vi) A statement of the categories of documents that are held by it or under its control.

Same as the reply to item No.(v)

(vii) The particulars of any arrangement that exists for consultation with, or representation by the members of the public in relation to the formulation or its policy or implementation thereof:

Nil

(viii) A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public or the minutes of such meetings are accessible for public.

A State-level Agency is appointed as per orders of the of Election Commission of India for the purpose of production of software required for compuerisation of Electoral Rolls and other related activities.

(ix) A Directory of its officers and employees:

The information is furnished vide Annexure-I.

(x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations:

The information is furnished vide Annexure-I

(xi) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports or disbursements made.

No Scheme / Plans are formulated by this office. All expenditures are non-plan.

(xii) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes.

All the schemes are non-plan schemes.

(xiii) Particulars of recipients of concessions, permits or authorisations granted by it.

Does not arise in view of replies to (xi) and (xii) above.

(xiv) Details in respect of the information, available to or held by it, reduced in an electronic form:

There is a separate web-site for the office of the Chief Electoral Officer, Karnataka and it is as follows:

http: //www.ceokarnataka.kar.nic.in

(xv) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use.

There is no separate library for the office of the Chief Electoral Officer, Karnataka. Citizens can obtain information during the office hours.

(xvi) The names, designations and other particulars of the Public Information Officers:

Shri Abhijit Das Gupta, Chief Electoral Officer & Ex-officio Principal Secretary to Government, DPAR(Elections)	Public Information Officer
Shri Y. Raju, Gazetted Personal Assistant to Chief Electoral Officer & Ex-officio Principal Secretary to Govt, DPAR (Elections)	Assistant Public Information Officer
Shri P.T.Kulkarni, Assistant Chief Electoral Officer & Ex-officio Under Secretary to Government, DPAR (Elections)	Public Information Officer
Shri B. Shivarama Gowda, Section Officer, Forms & Establishment Section	Assistant Public Information Officer
Shri B. Kodandaramagowda, Section Officer, General Section	Assistant Public Information Officer
Shri V. Venkatesh, Section Officer, ER Section	Assistant Public Information Officer
Sri. H.C. Nagendra, Joint Chief Electoral Officer & Ex-Officio Deputy Secretary to Govt., D.P.A.R. (Elections)	Appellate Authority

(xvii) Such other information as may be prescribed and thereafter update these publications every year.

Nil

By Order and in the Name of the Governor of Karnataka,

P.T. KULKARNI

Assistant Chief Electoral Officer &

Ex-officio Under Secretary to Govt, DPAR (Elections)

ANNEXURE-I

Sl. No.	Name of the Officer/Official	Designation	Gross Salary drawn per month (Rs.)
1	Sri. Abhijit Dasgupta	Chief Electoral Officer & Ex-officio Principal Secretary to Govt. D.P.A.R. (Elections)	48,711-00
2	Sri. H.C. Nagendra	Joint Chief Electoral Officer & Ex-Officio Deputy Secretary to Govt. D.P.A.R. (Elections)	23,966-00
3	Sri. P.T. Kulkarni	Assistant Chief Electoral Officer & Ex-Officio Under Secretary to Govt., D.P.A.R. (Elections)	17,912-00
4	Sri. Raju N.	Sr. Programmer	19,784-00
5	Sri. B. Shivaramagowda	Section Officer	20,350-00
6.	Sri. B. Kodandaramagowda	Section Officer	13,545-00
7	Sri. V. Venkatesh	Section Officer	19,784-00
8	**Vacant**	Section Officer	
9	Sri. Y. Raju	Personal Secretary to C.E.O.	17,251-00
10	Sri. C. Ravikumar	Senior Assistant	12,376-00
11	Sri. Shivanna	Senior Assistant	12,376-00

Sl. No.	Name of the Officer/Official	Designation	Gross Salary drawn per month (Rs.)
12	Sri. B.K. Manjunath	Senior Assistant	11,200-00
13	Sri. Papanna	Senior Assistant	11,421-00
14	Smt. M.N. Hemalatha	Account Superintendent	12,413-00
15	Smt. S. Anuradha	Account Superintendent	13,160-00
16.	Sri. K.T. Ramachandra	Assistant Statistical Officer	13,545-00
17	Sri. H. Narasimhaiah	Assistant	9,760-00
18	Sri. Bashir Ahmed	Assistant	10,186-00
19	Sri. R. Ramamurthy	Assistant	10,831-00
20	Sri. A. Kempegowda	Assistant	8,685-00
21	Sri. Srinivasa	Assistant	9,010-00
22	**Vacant**	Assistant	
23	**Vacant**	Assistant	
24	Sri. H.D. Chamdramouleshwar	First Division Assistant	9,086-00
25	Smt. Sulochana Ram Naik	First Division Assistant	10,585-00
26	**Vacant**	First Division Assistant	
27	Smt. Harsha Rani	Stenographer	12,761-00
28	Smt. R. Latha	Stenographer	9,420-00
29	Sri. Basir Ahmed B. Turki	Stenographer	9,495-00
30	Sri. M.R. Ranganath	Junior Assistant	8,081-00
31	Sri. H. Shivanna	Junior Assistant	6,326-00
32	Sri. H.R. Krishnamurthy	Junior Assistant	5,665-00
33	**Vacant**	Junior Assistant	
34	**Vacant (T)**	Junior Assistant	
35	Sri. B.J. Kushalendra	Second Division Assistant	5,450-00
36	Sri. K. Ramesh	Senior Typist	9,251-00
37	Sri. R.K. Ramesha	Typist	6,280-00
38	**Vacant**	Typist	
39	**Vacant (T)**	Typist	
40	Sri. Ramaswamy	Driver	9,446-00
41	Sri. Chaluvegowda	Driver	7,121-00
42	Sri. K. Boregowda	Driver	8,038-00
43	Sri. M. Prakash	Dalayat	4,976-00
44	Sri. B. Gopalakrishna	Dalayat	6,185-00
45	Sri. P. Hemanna Singh	Dalayat	4,337-00
46	Smt. Vijayakumari	Dalayat	5,635-00
47	Sri. Murthy	Dalayat	5,635-00
48	Sri. Ayub Khan	Dalayat	5,500-00
49	Sri. Mohamed Usman	Dalayat	6,175-00
50	Smt. Shivamma	Dalayat	4,600-00
51	Sri. Ramachandra L.	Jamedar	6,985-00
52	Watch and Ward	Vacant	
53	Watch and Ward	Vacant	
54	Dalayat (T)	Vacant	

P.T. KULKARNI
Assistant Chief Electoral Officer &
Ex-officio Under Secretary to Govt, DPAR (Elections)

ANNEXURE-II

THE RULES, REGULATIONS, INSTRUCTIONS, MANUALS AND RECORDS HELD BY DPAR(ELECTIONS) AND WHICH ARE USED BY ITS EMPLOYEES FOR DISCHARGING ITS FUNCTIONS

1) The Manual of Election Law
2) The Handbook for Returning Officers of elections to Parliament and Legislative Assembly(At Elections where Electronic Voting Machines are used).

3) The Handbook for Returning Officers of elections to Karnataka Legislative Coucil.
4) The Handbook for Presiding Officers (At elections where EVMs are used).
5) The Handbook for Polling Officers (At elections where EVMs are used)
6) The Handbook for Polling Agents (At elections where EVMs are used)
7) The Handbook for Counting Agents (At elections where EVMs are used)
8) The Handbook for Candidates(At elections where Electronic Voting Machines are used)
9) The Compendium of Instructions.
10) Handbook for Electoral Registration Officers.
11) The election statistics books of last General Elections.
12) Instructions for guidance of contesting candidates for lodging their Accounts of Election expenses.

P.T. KULKARNI
Assistant Chief Electoral Officer &
Ex-officio Under Secretary to Govt, DPAR (Elections)

P.R. 184

ELECTION COMMISSION OF INDIA
Nivachan Sadan, New Delhi-110001
Dated the 4th October 2005 / 12 Asvina, 1927 (Saka)
NOTIFICATION

No. 82/KT-LA/(4/2004)/2005:- In pursuance of Section 106 of the Representation of the People Act, 1951, (43 of 1951) the Election Commission of India hereby publishes the Judgement of the High Court of Karnataka, Bangalore dated: 15.7.2005 in Election Petition No.4 of 2004.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 15TH DAY OF JULY, 2005
BEFORE
THE HON'BLE MR. JUSTICE A M FAROOQ
ELECTION PETITION No.4 OF 2004

Between:

Dr. Sarvabhoum S Bagali,
S/o Sathagouda Bagali,
Aged 60 years,
R/o Santhoshi Complex,
Kacheri Road, Indi 586 709
Bijapur District. Petitioner

(By M/s. Pramila Associates 0- Advocates)

And:

Ravikant Spatil,
S/o Shankarappa Patil,
Aged 46 years,
R/o Satalgaon P.B.
Taluka Indi, District Bijapur. Respondent

(By Sri Basava Prabhu Patil - Advocate)

Election Petition is filed under Section 81 of the Representation of People Act, 1951 to declare the result of the respondent to the 223 Indi Assembly Constitutency as null and void and to declare that the respondent was disqualified to be chosen to be the member of the Karnataka Legislative Assembly on the date of election etc.,

This petition coming on for pronouncement of order today having heard and reserved. Court made the following:

ORDER

This election petition is filed under Section 81 of the Representation of People Act 1951, hereinafter referred to as the Act' for short, in respect of the general elections held during April, 2004 for the Karnataka Legislative Assembly for the 223 Indi Assembly Constituency. The petitioner was a candidate sponsored by the Bharativa Janatha Party and he was one out of the six candidates in the tray. He has questioned the declaration of the respondent as the declaration sucdcessful candidate in the said election. The main ground on which the petitioner questions the election of the respondent is that on the date of his election, the respondent did not have the qualification to contest an election. According to the

petitioner, on the date of filing of nominations and on the date of the declaration of results, the respondent was disqualified to be chosen to fill the seat of a M L A in view of Section 8(1), (3) & (4) of the Act having been convicted for an offence punishable under Section 376 IPC and sentenced to imprisonment for more than 2 years.

2. it is the further case of the petitioner that the respondent had been a sitting M L A in the erstwhile Karnataka Legislative Assembly which was dissolved under a notification dated 23/2/2004 by the Government. That therefore on the date of filing of nominations, the respondent was not a sitting M.L.A. That the respondent had filed his nomination as an independent candidate on 29/3/2004. That the petitioner had filed his objections before the Returning Officer along with a copy of the judgement of the Supreme Court in D.R. Kapur Vs., State of Tamil Nadu, 2001 (7) SCC 231. That the petitioner also had brought to the notice of the Returning Officer that the respondent intended to convert himself to islamic faithy and had changed his name from Ravikant Patil to Mohammed Rafi and therefore his filing nomination showing his earlier name was illegal and which amounted to perjury. The petitioner has, therefore, sought for a declaration declaring the result of the election of the respondent to 223 Indi Assembly Constituency as null and void by declaring that the respondent was disqualified to be chosen to be the member of the Legislative Assembly on the date of the election and for an order directing fresh election to the said constituency, awarding costs etc.,

3. The respondent filed his statement of objections contending that the election petition is not maintainable in view of non-joinder of necessary parties and for non disclosure of cause of action. It is further contended that under the provisions of Section 8(4) of the Act any conviction passed in respect of offences mentioned in the Section against the sitting member of the legislative assembly shall not operate as disqualification. It was stated that the respondent was the sitting member of the earlier assembly and therefore Section 8(4) is attracted and in view of the same he could not be disqualified to contest the election on the ground that he has been convicted for an offence under the I.P.C. It is further stated that the petitioner has filed W.P. No.20379/2004 challenging the constitutional validity of Section 8(4) of the Act which is still pending. He further denied all the allegations made against him in the election petition and prayed for dismissal of the petition.

4. Constidering the pleadings of the parties, the following issues had been framed:

i) Whether the Respondent proves that the present Election Petition is not maintanable as the same does not disclose cause of action as required by law and consequently, the same is hable to be rejected?

ii) Whether the Respondent proves that the present Election Petition is not maintainable as the same is not validly verified and consequently, the same is liable to be rejected?

iii) Whether the Respondent proves that the present Election Petition is not maintainable for non-joinder of necessary party to the Election Petition and consequently, the same is liable to be rejected?

iv) Whether the Respondent proves that in view of the pendency of Writ Petition No.20379/2004 filed by the Petitioner herein before this Hon'ble Court, the present Election Petition is not maintainable and is liable to be rejected?

v) Whether the Petitioner proves that the Respondnet incurred the disqualification in terms of Section 8 of the Representation of People Act, 1951, as on 29/3/2004 viz., the date of filing of nomination papers to the Returning Officer of the No.223 Indi Assembly Constituency of Karnataka State Legislative Assembly, in the General Elections held in April 2004?

vi) If answer to Issue No.5 is in attirmative, whether the Petitioner further proves that the result of the election of the Respondent to the Karnataka State Legislative Assembly from No.223 Indi Assembly Constituency in April 2004 General Elections is liable to be set aside?

vii) Whether the Petitioner proves that the Respondent has sworn to a taise attidavit submitted along with the Nomination Form before the Returning Officer of 223 Indi Assembly Constutuency during the General Elections held in April 2004?

viii) Whether the Petitioner proves that the order of the Returning Officer of 223 Indi Assembly Constituency not rejecting the nomination of the Respondent and overruling the objections of the Petitioner, is improper affecting the legal rights of the Petitioner and consequently the same liable to be set aside?

ix) Whether the Petitioner proves that the Respondent filed false affidavit before the Returning Officer of 223 India Assembly Constitutency during the April 2004, General Election and the

same consequently amounts to disqualification under Section 8 of the Representation of People Act, 1951?

x) Whether the petitioner proves that the respondent was on the date of fling his nominations and on the date of election disqualification to be chosen to fill the seat in the Karnataka Legislative Assembly in view of his conviction and consequently the declaration of result of the respondent to the 223 Indi Assembly Constituency is null and void?

xi) Whether the petitioner proves that the respondent had filed a false attidavit before the Returning Officer at the time of filing his nominations suppressing the change of name and change in religion and therefore the nominations were liable to be rejected?

xii) If so, what order?

5. By consent docuemtns Ex.P1 to P18 were marked. Despite the above mentioned several issues framed, the learned Senior Counsel appearing for the petitioner restricted her arguments only on issue No.(v) as regards disqualification incurred by the respondent in terms of Section 8 of the Act. On behalf of the respondent, it was contended that the petition is not maintainable since no cause of action is shown. The learned counself made their submission only on the above two points.

6. Sri Basavaprabhu Patil, learned counsel appearing for the respondent has relied upon the Judgement of the Hon'ble Supreme Court in HARMOHINDER SINGH PRADHAN V. RANJEET SINGH TALWANDI & OTHERS, 2005 AIR SCW 2512 to contend that when no cause of action is pleaded, the petition itself should be rejected as not disclosing a cause of action under clause (a) of Rule 11 of Order 7 CPC. That was a case where there was lack of pleading showing a cause of action even though there was an allegation to the effect that an appeal was made in the name of the religion of the elected respondent while appealing to elect the respondent. The Hon'ble Supreme Court found that all that has been alleged is that certain religious leaders, who were held in reverence by the voters, issued an appeal to vote in favour of the elected respondent. It was found that the appeals made forming the gravamen of the charge of corrupt practice do not carry in it the element of an appeal to vote for any person on the ground of religion. In that case, the High Court itself had rejected the election petition on the ground that it does not show any cause of action and that was confirmed by the Apex Court. In the present case, the main gound that is alleged by the election petitioner is that the respondent was not qualified to contest the election in view of the fact that he has been convicted under the Indian Penal Code and sentenced to imprisonment for more than 2 years and that too for a grave offence under Section 376 IPC and hence he was disqualified to contest the election even though the order of conviction has been appealed against. After going through the pleadings I am of the view that all necessary facts showing the cause of action has been clearly pleaded in the petition,. Therefore, the contention of the respondent that the election petition does not disclose cause of any action is rejected.

7. It is not disputed that the respondent was the first accused in Sessions Case No.203/99 on the file of the learned Additional Sessions Judge, Solapur. He was tried along with others for offences punishable under Sections 366 & 376 IPC and convicted for offence under Section 366 IPC and sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.1000/- and in default to suffer rigorous imprisonment for 10 months. He was further convicted for the offence punishable under Section 376(1) IPC and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs.1000/- and in default to suffer R 1 for 10 months with a direction that the substantive sentences of imprisonment to run concurrently. This judgement and order of conviction was passed on the respondent on 28/7/2000. The general elections for the Karnataka Legislative Assembly for 213 Indi Assembly Constituency was held on 20/4/2004 and as per the calendar of events issued the last date for filing nomination was 31/3/2004 and date of scrutiny was 2/4/2004 and last date for withdrawal was 5/4/2004. The petitioner filed his objections before the Returning Officer against accepting the nomination of the respondent on several grounds including the ground that the respondent has been convicted under Section 376 IPC and sentenced to R 1 for 7 years and hence under Section 8(1) of the Act he was disqualified. His objection was overruled by the Returning Officer and the nomination of the respondent was accepted and ultimately the respondent was declared elected.

8. Smt. Pramila Nesargi, Learned senior counsel appearing for the petitioner has relied upon the judgement in **K. PRABHAKARAN v. JAYARAJAN, AIR 2005 SC 688,** and submitted that the case on hand is fully covered by the said judgement and hence the election petition should be allowed as prayed for. The Hon'ble Supreme Court in para 61 of the above judgment has held as under:-

*61. To sum up, our findings on the questions arising for decision in these appeals are as under.

1. The question of qualification or disqualification of a returned candidate within the meaning of Section 100(1)(a) of the Representation of People Act, 1951 (RPA, for short) has to be determined by reference to the date of his election which date, as defined in Section 67A of the Act, shall be the date on which the candidate is declared by returning officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100 (1) (d) by reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2) (a) of the Act. Such dates are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under sub-sections (1), (2) and (3) of Section 8 shall have to be determined. The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decisive dates are the date of electi9on and the date of scrutiny of nomination and not the date of judgement in an election petition or in appeal thereagainst.
2. For the purpose of attracting applicability of disqualification within the meaning of "a person convicted of any offence and sentenced to imprisonment for not less than two years". - the expression as occurring in Section 8(3) of the RPA, what has to be seen is the total length of time for which a person has been ordered to remain in prison consequent upon the conviction and sentence pronounced at a trial. the word 'any' qualifying the word 'offence' should be understood as meaning the nature of offence and not the number of offence/offences.
3. Sub-section (4) of Section 8 of the RPA is an exception carved out from sub-sections (1), (2) and (3). The saving from disqualification is preconditioned by the person convicted being a Member of a House on the date of the conviction. The benefit of such saving is available only so long as the House continues to exist and the person continues to be a Member of a House. The saving ceases to apply if the House is dissolved or the person ceases to be a Member of the House."

9. Thus as can be seen from the judgment of the Hon'ble Supreme Court, the purpose of enacting disqualification under Section 8(3) of the Act is to prevent criminatlisation of politics. Those who break law should not make the law. That, persons with criminal background pollute the process of election, as they do not have many a holds barred and have no reservation from indulging into criminality to win successs at an election and thus provision of Section 8 seeks to promote freedom and fairness at elections and hence the provision has to be meaningfully construed as to effectively prevent the mischief sought to be prevented. It further held that whether a nomination was improperly accepted for not shall have to be determined for the purpose of Section 100(1)(d)(i) on reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2)(a) of the Act and it is by reference to such focal point dates that the question of disqualification shall have to be determined. That the factum of pendency of an appeal against the conviction is irrelevant and inconsequential and so also a subsequent decision in appeal or revision setting aside the conviction or sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates and that the decision dates are the date of election and the date of scrutiny of nomination and not the date of judgment in an election petition or in appeal there against. The learned senior counsel Smt. Pramila Nesargi relying upon the above judgment submitted that when admittedly the respondent was convicted after a full fledged trial by a competent Court for a serious offence under the Indian Penal Code and sentenced to rigorous imprisonment for 7 years and when such conviction was in force, he is disqualified from contesting any election under the Act in view of Section 8 of the Act. The learned senior counsel also submitted that the respondent cannot even c9ontend that he was a sitting member of the Legislative Assembly during that period when admittedly the assembly was dissolved on 23/2/2004. She also submitted that the fact that the respondent has filed a writ petition challenging Section 8(4) of the Act cannot be made a ground to stay the proceedings in this petition.

10. Sri Basavaprabhu, learned counsel for the respondent submitted that it is true that the Hon'ble Supreme Court in K. Prabhakaran's case supra has held that a person convicted for an offence gets disqualified to contest an election under the Act, but however, according to the learned counsel, the

judgement of the Hon'ble Supreme Court was passed on 11/1/2005 long after the election was held and therefore the principles laid down in the said judgement was not applicable. It is submitted by the learned counsel that the law which was being followed till the above mentioned judgment of the Supreme Court was that when there is a conviction and against which an appeal is filed and especially when there is an interim order of stay in the appeal, the disqualification will no more exist. It is stated that on the date when the respondent filed his nomination, his appeal was pending and hence the respondent was not disqualified from filing his nomination. He further submitted that the law declared by the Supreme Court in Prabhakaran's case is a court made law and it will come into effect only from the date when the judgment was delivered and not earlier. He submitted that to interpret such a judgment it has to be read down and if it is read down it should be construed as a judgment which will not be applicable to the case of the respondent whose election had taken place long before the rendering of the judgment.

11. I have carefully considered all the contentions raised by the parties. It is true that the Hon'ble Supreme Court delivered the Judgment long after the respondent had filed his nomination and long after his election. But it cannot be said that the judgment cannot be applicable to the facts of the case. In Prabhakaran's case, the election was to an Assembly constituency in Kerala which was held in April-May 2001, nominations were filed on 24/4/2001 and poll was held on 10/5/2001 and the result of the election was declared on 13/5/2001. That shows that in that case also when the nomination was filed, the law that was followed in respect of conviction of a candidate was that if there is an appeal filed against the conviction, nomination could be filed. The Hon'ble Supreme Court in the said judgment considered the questions as to whether the candidature of the successful candidate could have been accepted when he had been convicted for more than 2 years under I.P.C. After reconsidering all the earlier judgments the Constitution Bench of the Hon'ble Supreme Court held that when there is a conviction on the date of filing of the nomination which has not been set aside by a higher court on that date, the person gets disqualified and he cannot file a nomination to contest an election under the Act.

12. In Prabhakaran's case (Supra) the Hon'ble Supreme Court was considering the scope of Section 8(3) & (4) of the Act and gave the decision as culoled out earlier. In my humble view, interpretation given by the Supreme Court cannot be said to be a law made by the Hon'ble Supreme Court. The Hon'ble Supreme Court has just interpreted the section 8 of the Act and overuled the earlier views and hled that no person who suffered a conviction as provided under Section 8(3) & (4) of the Act can file his nomination under the Act when such a conviction was in force and when it has not been set aside at the time when the nomination was filed. Therefore, in my humble view, the contention of the respondent that the Judgment has no application in this case cannot be accepted. There is not question of reading down the judgment. The judgment of the Hon'ble Supreme Court is appicable in all force to this case in view of the admitted facts of the case. Therefore, it has to be held that the respondent did not have the qualification to file the nomination and was disqualified to be chosen to fill the seat and his subsequent election has to be declared as void.

13. It was next contended by Sri Basavaprabhu Patil that the respondent was a sitting member of the Legislative Assembly when he filed his nomination and hence Section 8(4) of the Act is attracted. However, it is not disputed by him that the Legislative Assembly was dissolved much earlier to his filing nomination. In Prabhakaran's case (supra), the Hon'ble Supreme Court considered such a situation and has held that the saving from disqualification is a preconditioned by the person convicted being a member of a house on the date of the election and that the benefit of such saving is available only so long as the House continues to exist abnd the person continues to be a member of the House. It further held that the saving ceases to apply if the house is dissolved or the person ceases to be a member of the House. Thus the above contention raised on behalf of the respondent is already answered by the Apex Court in the above said judgment and hence the said contention has no force.

In the result, this election petition is allowed and it is declared that the election and declaration of result of the respondent to the 223 Indi Assembly Constituency is null and void. No order as to costs.

By Order,
TAPAS KUMAR
SECRETARY,
ELECTION COMMISSION OF INDIA.
Deputy Registrar,
High Court of Karnataka, Bangalore.

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